

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States
Commonwealth of Virginia

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Joshua Van Eaton, US Dept of Justice, PO Box 7611
Washington, DC 20044-7611; (202)514-5474

David Grandis, Commonwealth of Virginia, 900 East Main Street
Richmond, VA 23219; (804)786-2071

DEFENDANTS

Allan Myers, Inc.; Allan Myers, LP; Allan Myers MD, Inc.; Allan Myers VA, Inc.

County of Residence of First Listed Defendant Montgomery County, PA

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Jonatham Rinde, Esq.
Manko, Gold, Katcher, Fox LLP
401 City Ave, Suite 901
Bala Cynwyd, PA 19004
(484)430-2325

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Clean Water Act 33 U.S.C. §1251 et seq.

Brief description of cause:

Civil suit seeking penalties and injunctive relief for violations of CWA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

04/13/2015

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

**UNITED STATES OF AMERICA, and the
COMMONWEALTH OF VIRGINIA**

v.

ALLAN MYERS, INC. ET AL

:
:
:
:
:
:

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

13 APR 2015

Date


Joshua Van Eaton, Trial Attorney, USDOJ

Attorney for

(202)514-5474

Telephone

(202)514-0097

FAX Number

josh.van.eaton@usdoj.gov

E-Mail Address

**Civil Justice Expense and Delay Reduction Plan
Section 1:03 - Assignment to a Management Track**

- (a) The clerk of court will assign cases to tracks (a) through (d) based on the initial pleading.
- (b) In all cases not appropriate for assignment by the clerk of court to tracks (a) through (d), the plaintiff shall submit to the clerk of court and serve with the complaint on all defendants a case management track designation form specifying that the plaintiff believes the case requires Standard Management or Special Management. In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.
- (c) The court may, on its own initiative or upon the request of any party, change the track assignment of any case at any time.
- (d) Nothing in this Plan is intended to abrogate or limit a judicial officer's authority in any case pending before that judicial officer, to direct pretrial and trial proceedings that are more stringent than those of the Plan and that are designed to accomplish cost and delay reduction.
- (e) Nothing in this Plan is intended to supersede Local Civil Rules 40.1 and 72.1, or the procedure for random assignment of Habeas Corpus and Social Security cases referred to magistrate judges of the court.

**SPECIAL MANAGEMENT CASE ASSIGNMENTS
(See §1.02 (e) Management Track Definitions of the
Civil Justice Expense and Delay Reduction Plan)**

Special Management cases will usually include that class of cases commonly referred to as "complex litigation" as that term has been used in the Manuals for Complex Litigation. The first manual was prepared in 1969 and the Manual for Complex Litigation Second, MCL 2d was prepared in 1985. This term is intended to include cases that present unusual problems and require extraordinary treatment. See §0.1 of the first manual. Cases may require special or intense management by the court due to one or more of the following factors: (1) large number of parties; (2) large number of claims or defenses; (3) complex factual issues; (4) large volume of evidence; (5) problems locating or preserving evidence; (6) extensive discovery; (7) exceptionally long time needed to prepare for disposition; (8) decision needed within an exceptionally short time; and (9) need to decide preliminary issues before final disposition. It may include two or more related cases. Complex litigation typically includes such cases as antitrust cases; cases involving a large number of parties or an unincorporated association of large membership; cases involving requests for injunctive relief affecting the operation of large business entities; patent cases; copyright and trademark cases; common disaster cases such as those arising from aircraft crashes or marine disasters; actions brought by individual stockholders; stockholder's derivative and stockholder's representative actions; class actions or potential class actions; and other civil (and criminal) cases involving unusual multiplicity or complexity of factual issues. See §0.22 of the first Manual for Complex Litigation and Manual for Complex Litigation Second, Chapter 33.

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.Address of Plaintiff: US Department of Justice, PO Box 7611, Washington, DC 20044-7611Address of Defendant: PO Box 1340, 1805 Berks Road, Worcester, PA 19490Place of Accident, Incident or Transaction: Pennsylvania, Maryland, Virginia

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes ☐ No ☒CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify) Clean Water Act

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Joshua H. Van Eaton, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.


DATE: 13 APR 2015
Attorney-at-Law

WA 39871

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 13 APR 2015
Attorney-at-Law

WA 39871

Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
AND THE)	
COMMONWEALTH OF VIRGINIA,)	
)	
Plaintiffs,)	
)	Civil Action No. _____
v.)	
)	
ALLAN MYERS, INC.,)	
ALLAN MYERS, LP,)	
ALLAN MYERS MD, INC.,)	
ALLAN MYERS VA, INC.,)	
)	
Defendants.)	
_____)	

COMPLAINT

Plaintiff, the United States of America, by authority of the Attorney General of the United States, at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), by and through their undersigned attorneys, with respect to claims under federal law; and Plaintiff the Commonwealth of Virginia (hereinafter State Plaintiff), by and through their undersigned attorneys, with respect to claims under Virginia law, allege as follows:

INTRODUCTION

1. This is a civil action for injunctive relief and civil penalties brought pursuant to Section 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(b) and (d), against Allan Myers, Inc. (formerly known as American Infrastructure, Inc.), Allan Myers MD, Inc. (formerly known as American Infrastructure-MD, Inc.), Allan Myers VA, Inc. (formerly known as American Infrastructure-VA, Inc., and before that as R.G. Griffith, Inc.), and Allan Myers, L.P (formerly known as Allan A. Myers, LP), (collectively, "Allan Myers") for the discharge of pollutants in storm water without a permit in violation of CWA Section 301, 33 U.S.C. § 1311;

for failure to timely submit the information required to obtain coverage under an applicable permit for the discharge of storm water associated with its construction activities in violation of CWA Section 308, 33 U.S.C. § 1318; and for failure to comply with the conditions of permits (including various state general permits) issued pursuant to CWA Section 402, 33 U.S.C. § 1342, including the discharge of pollutants in storm water from construction sites, in violation of CWA Section 301, 33 U.S.C. § 1311.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355 and 33 U.S.C. § 1319(b).

3. Venue is proper in this District pursuant to 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391 and 1395, because Allan Myers conducts business in this District, and because a number of the violations occurred in this District.

4. Notice of the commencement of this action has been given to the State of Maryland and the Commonwealths of Pennsylvania and Virginia in accordance with 33 U.S.C. § 1319(b).

DEFENDANTS

5. Allan Myers, Inc. (formerly known as American Infrastructure, Inc.), is a corporation organized and existing under the laws of Delaware and is a “person” as defined in CWA Section 502, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2. Allan Myers, Inc.’s principal place of business is in Worcester, Pennsylvania.

6. Allan Myers, L.P. (formerly known as Allan A. Myers, LP) is a Limited Partnership organized and existing under the laws of Pennsylvania and is a “person” as defined in CWA Section 502, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2. Allan Myers, L.P.’s principal place of business is in Worcester, Pennsylvania.

7. Allan Myers MD, Inc. (formerly known as American Infrastructure-MD, Inc.) is a corporation organized and existing under the laws of Maryland and is a “person” as defined in CWA Section 502, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2. Allan Myers MD, Inc.’s principal place of business is in Fallston, MD.

8. Allan Myers VA, Inc. (formerly known as American Infrastructure-VA, Inc., and before that as R.G. Griffith, Inc.) is a corporation organized and existing under the laws of Virginia and is a “person” as defined in CWA Section 502, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2. Allan Myers VA, Inc.’s principal place of business is in Chantilly, VA.

9. Hereinafter, the term “Allan Myers” includes Allan Myers, Inc., and its wholly-owned subsidiaries that engage in construction, Allan Myers, LP, Allan Myers MD, Inc., and Allan Myers VA, Inc.

10. Allan Myers does business in at least three states of the United States, including in this District.

STATUTORY AND REGULATORY AUTHORITY

11. The Clean Water Act is designed to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

12. To accomplish the objectives of the CWA, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant” by any person in violation of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342, or by any person without such a permit.

13. A person is defined by the CWA as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).

14. CWA Section 502(12), 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” as, *inter alia*, “any addition of any pollutant to navigable waters from any point source.”

15. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.”

16. CWA Section 502(14), 33 U.S.C. § 1362(14), defines a “point source” as including “any discernable, confined and discrete conveyance...from which pollutants are or may be discharged.”

17. CWA Section 402(p), 33 U.S.C. § 1342(p), requires a permit for storm water discharges associated with industrial activity.

18. EPA regulations define the term “storm water discharge associated with industrial activity” to include storm water discharges from construction activities including clearing, grading, and excavation that result in the disturbance of: (1) five or more acres of total land area; or (2) less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more. 40 C.F.R. § 122.26(b)(14)(x).

19. State Plaintiff’s analogous state law requires a permit for discharges of stormwater associated with construction activities to state waters.

20. CWA Section 308, 33 U.S.C. § 1318 requires owners and operators of point sources to submit information to the EPA as needed to carry out the objectives of the Clean Water Act, including the NPDES permit program of CWA Section 402, 33 U.S.C. §1342.

21. In 1992, EPA issued a Final NPDES General Permit for Storm Water Discharges from Construction Activities (“Federal General Permit”). 57 Fed. Reg. 41176, 41209 (Sept. 9, 1992). EPA has, on various occasions, subsequently modified and reissued this general permit. *See* 63

Fed. Reg. 7858-7906 (Feb. 17, 1998); 63 Fed. Reg. 36490-36519 (July 6, 1998); 65 Fed. Reg. 25122-25145 (Apr. 28, 2000); 68 Fed. Reg. 39087-39091 (July 1, 2003); and 73 Fed. Reg. 40338-40343 (July 14, 2008). On January 28, 2010, EPA extended the term of the Federal General Permit by one year, to June 30, 2011. 75 Fed. Reg. 4554 (Jan. 28, 2010). On April 25, 2011, EPA published a Federal Register notice proposing to extend the 2008 Federal General Permit to January 31, 2012. 76 Fed. Reg. 22891 (April 25, 2011).

22. Pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), EPA may authorize a state to implement its own NPDES storm water permitting program for discharges into navigable waters within its jurisdiction.

23. Pennsylvania, Maryland, and Virginia are each authorized states and have issued their own NPDES general permits governing discharges of storm water associated with construction activities. A general permit for storm water discharges associated with construction activities that is issued by a state with an EPA-approved NPDES permitting program is hereinafter referred to as a “General Permit.” The United States may enforce the state-issued General Permits under the CWA. The state NPDES general permit for storm water discharges associated with construction activities that applies in a state is hereinafter referred to as the “Applicable General Permit.”

24. The applicable Pennsylvania General Permit is the “Commonwealth of Pennsylvania General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, PAG-02.” A person proposing an earth disturbance activity that involves equal to or greater than one acre of earth disturbance must obtain an individual NPDES permit or coverage under the General Permit PAG-02. 25 Pennsylvania Code § 102.5(a). In Pennsylvania, an “operator” who

is not the initial permittee must become a co-permittee with the existing permit holder. 25 Pa. Code § 102.5(h).

25. The applicable Maryland General Permit is the “Maryland Department of the Environment General Permit for Construction Activity,” General NPDES Permit Number MDR 10, State Discharge Permit Number 03GP. Prior to the initiation of ground disturbing construction activities in Maryland, under the terms of the Maryland General Permit, persons who disturb earth as part of a construction activity and fail to notify the State of their intent to be covered under the permit, and discharge pollutants to waters of the United States without permit coverage, are in violation of the Clean Water Act. See also, Title 26, Subtitle 8, Code of Maryland 26.08.04.09.

26. The applicable Virginia General Permit is the “General VPDES Permit for Discharges of Stormwater from Construction Activities,” VAR10 (originally the “General Permit for Discharges of Stormwater from Construction Activities,” General Permit No. DCR01). Operators of construction activities resulting in land disturbance equal to or greater than one acre must apply for an individual permit or coverage under the Virginia General Permit. Va. Code §§ 62.1-44.15:24 - 62.1-44.15:50 (2014) (originally codified at Va. Code §§ 10.1-603.1 - 10.1-603.15) (2012)); 9 VAC 25-880-70 (originally 9 VAC 50-60-1170).

27. Under EPA’s regulations, persons who discharge or who propose to discharge “storm water associated with industrial activity” are required to apply for an individual permit or to seek coverage under a promulgated storm water general permit. 40 C.F.R. §§ 122.21(a) & (c), 122.26(c), 122.28. In applying for coverage under a storm water individual or general permit, a potential permittee must provide the necessary information on the basis of which EPA (or the

authorized state permitting agency) may evaluate the appropriateness of the issuance of and the terms of any such permit.

28. Though they differ in some of the details, in general, under the General Permits, any person subject to a general permit is required to develop a storm water pollution prevention plan (“SWPPP”), which sets forth a plan to control and reduce pollutants in storm water discharged from construction activities. The SWPPP must meet specific requirements and include certain information, including a description of the control measures to meet the effluent limits in the Federal General Permit.

29. A central requirement of the SWPPP is that it must contain detailed information, including which best management practices (“BMPs”) will be installed and maintained at the site to prevent or reduce the discharge of pollutants to waters. These practices include measures to prevent erosion (by using soil stabilization and other preventative measures) and sediment capturing (by using silt fences, sedimentation basins, and other measures to capture sediment before it leaves the site).

30. The Applicable General Permits require the permittee to properly operate and maintain the BMPs. The Applicable General Permits also impose additional requirements, including, *inter alia*: inspection of the site during construction, Federal General Permit, Part 4, maintenance of the SWPPP and sometimes other records at the site, Federal General Permit, Part 5.10 and 5.11; and final stabilization of the site followed by termination of the permit coverage, Federal General Permit, Part 6.2.

31. CWA Section 309(b), 33 U.S.C. § 1319(b), authorizes the Administrator of EPA “to commence a civil action for appropriate relief, including a permanent or temporary injunction,”

when any person is in violation of 33 U.S.C. §§ 1311, 1318, or of any permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342, including state permits. 33 U.S.C. § 1319(b).

32. CWA Section 309(d), 33 U.S.C. § 1319(d), provides, in part, that any person who violates 33 U.S.C. §§ 1311, 1318, or any permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342 EPA or a state, shall be subject to a civil penalty not to exceed \$32,500 per day for each such violation occurring from March 16, 2004 through and including January 12, 2009, and \$37,500 per day for each such violation thereafter. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4; 73 Fed. Reg. 75340-45 (Dec. 11, 2008, as corrected at 74 Fed. Reg. 626-27, Jan. 7, 2009) (codified at 40 C.F.R. pt. 19).

GENERAL ALLEGATIONS

33. EPA, together with state and county offices administering the NPDES program in Pennsylvania, Maryland, and Virginia, conducted inspections at a number of Allan Myers' construction sites in Pennsylvania, Maryland and Virginia. EPA obtained additional inspection information from Allan Myers through an information request issued by EPA pursuant to CWA § 308, 33 U.S.C. § 1318.

34. Based on the inspections, responses to information requests and other information, the United States alleges that Allan Myers has exhibited a pattern violating the Applicable General Permit at fourteen (14) construction sites (collectively the "Sites") that could or did result in discharges of storm water pollutants from the Sites. The additional information that Allan Myers provided to EPA also demonstrated recurring storm water permit violations, as well as continued failure to remedy the violations in a timely manner. The Sites at which 608 violations occurred are listed in Appendix A.

35. Allan Myers engaged in construction activities including clearing, grading, and excavation that resulted in the disturbance of five or more acres of land at each of the Sites listed in Appendix A.

36. At the Sites listed in Appendix A, Allan Myers controlled the plans and specifications for construction activities, or otherwise met the definition of owner or operator under 40 C.F.R. § 122.2 and the Applicable Permit, and was therefore required to obtain NPDES permit coverage for its storm water discharges from construction activities, and to comply with all applicable requirements and conditions under the Act, its regulations, and the Applicable Permit. 33 U.S.C. §1342; 40 C.F.R. §§122.21, 122.26.

37. At four Sites listed in Appendix A, Allan Myers failed to apply for or obtain coverage under the Applicable Permit.

38. Each of the Sites listed in Appendix A constitutes a “point source[s]” within the meaning of Section 502(14) of the Act, 33 U.S.C. §1362(14).

39. More than 600 violations of the CWA occurred at the Sites listed in Appendix A between July 19, 2004 and July 28, 2006.

40. At Sites listed in Appendix A, Allan Myers’ construction activities resulted in the “addition” of “pollutants,” including rock, sand, cellar dirt, industrial waste, and other pollutants to streams, creeks, and other water bodies that are “waters of the United States,” listed in Appendix B, within the meanings of Sections 502(6) and (7) of the Act, 33 U.S.C. §1362(6), (7), and 40 C.F.R. §122.2.

41. Through the addition of such pollutants to waters of the United States through point source(s), Allan Myers has engaged in the “discharge of pollutants” within the meanings of Sections 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12), and 40 C.F.R. §122.2.

42. At Sites listed in Appendix A, within the dates indicated in Appendix A, Allan Myers discharged pollutants without a permit into waters of the United States listed in Appendix B.

43. At Sites listed in Appendix A, within the dates indicated in Appendix A, Allan Myers discharged pollutants in violation of the terms of the Applicable Permit into waters of the United States listed in Appendix B.

44. At Sites listed in Appendix A, within the dates indicated in Appendix A, Allan Myers committed other violations of the Act, its regulations, and the Applicable Permit including, *inter alia*, failure to: properly design, implement and maintain erosion control measures such as silt fencing, soil stabilization, construction track-out pads, inlet protection, and sediment traps as required by the Applicable General Permits; (collectively, “BMP Operations & Maintenance” or “BMP O&M”); implement erosion control measures in the proper sequence (“Sequencing”); prepare an adequate SWPPP; operate with an approved erosion and sediment control plan; and, failure to prevent sediment discharges.

FIRST CLAIM FOR RELIEF

ALLAN MYERS FAILED TO TIMELY SUBMIT THE INFORMATION REQUIRED TO OBTAIN COVERAGE UNDER AN APPLICABLE PERMIT

45. The United States realleges and incorporates by reference Paragraphs 1 through 44.

46. Allan Myers failed to timely submit the information required to obtain coverage under an Applicable Permit for the discharge of storm water associated with its construction activities from certain Sites listed in Appendix A as “No Permit,” within the dates indicated in Appendix A, in violation of CWA Section 308, 33 U.S.C. § 1318. At three sites in Pennsylvania listed in Appendix A, Allan Myers failed to become a co-permittee with the existing permit holder as required by 25 Pennsylvania Code § 102.5(h). At one site in Maryland listed in Appendix A,

Allan Myers failed to apply for coverage under the Maryland General Permit as required by Title 26, Subtitle 8, Code of Maryland 26.08.04.09.

47. Pursuant to 33 U.S.C. §1319, Allan Myers is liable for injunctive relief and civil penalties of up to \$32,500 per day for each such violation occurring after March 16, 2004 through and including January 12, 2009, and \$37,500 per day for each such violation thereafter.

SECOND CLAIM FOR RELIEF

ALLAN MYERS DISCHARGED POLLUTANTS IN STORM WATER WITHOUT AN APPLICABLE PERMIT

48. The United States realleges and incorporates by reference Paragraphs 1 through 44.

49. Allan Myers discharged pollutants in storm water from Sites listed in Appendix A as “Discharge w/o Permit,” to waters of the United States within the meaning of Section 502(7) of the CWA, and the federal regulations implementing the CWA at 40 C.F.R. §122.2, without coverage under an Applicable permit in violation of CWA Section 301, 33 U.S.C. § 1311, within the dates indicated in Appendix A.

50. The receiving waters into which Allan Myers discharged pollutants from Sites without a permit are identified in Appendix B. Each of these receiving waters is either a tributary or unnamed tributary that is a perennial tributary, or flows into a perennial tributary, to a traditionally navigable waterway. *See* Appendix B.

51. Unless enjoined, these violations will continue or will recur at other construction sites.

52. Pursuant to 33 U.S.C. §1319, Allan Myers is liable for injunctive relief and civil penalties of up to \$32,500 per day for each such violation occurring after March 16, 2004 through and including January 12, 2009, and \$37,500 per day for each such violation thereafter.

THIRD CLAIM FOR RELIEF

**ALLAN MYERS VIOLATED THE
REQUIREMENTS OF THE APPLICABLE PERMITS**

53. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 44.

54. At Sites listed in Appendix A, Allan Myers failed to comply with the terms and conditions of the Applicable Permits at numerous Sites listed in Appendix A as “Violation of CWA/ Applicable Permit,” in violation of CWA Section 301, 33 U.S.C. § 1311 and applicable state law by, *inter alia*, failing to properly install, operate, and maintain BMPS, failing to have erosion and sediment control plans approved, and failing to implement erosion and sediment controls in the proper sequence, within the dates indicated in Appendix A. *See also, supra* ¶ 44. At Sites listed in Appendix A, Allan Myers violated Section 301 of the CWA and applicable state law by failing to comply with the terms of a permit issued to a third party (“3rd Party Permit”), and at Sites in Pennsylvania listed in Appendix A, Allan Myers violated Section 301 of the CWA by failing to comply with the terms of a permit for which Allan Myers was a co-permittee by, *inter alia*, failing to properly install, operate, and maintain BMPS, and failing to implement erosion and sediment controls in the proper sequence, within the dates indicated in Appendix A. *See also, supra* ¶ 44.

55. Allan Myers discharged pollutants in storm water from certain Sites listed in Appendix A under “Violation of CWA/ Applicable Permit” as “Sediment Discharges” to waters of the United States within the meaning of Section 502(7) of the CWA, and the federal regulations implementing the CWA at 40 C.F.R. § 122.2, in violation of an Applicable permit and of CWA Section 301, 33 U.S.C. § 1311, and applicable state law, within the dates indicated in Appendix A. At those sites located in Virginia listed in Appendix A under “Violation of CWA/ Applicable Permit” as “Sediment Discharges,” Allan Myers discharged pollutants in storm water to surface

waters of the Commonwealth within the meaning of the Virginia Stormwater Management Program Regulation, 9 VAC 25-870-10 (originally 4 VAC 50-60-10) within the dates indicated in Appendix A.

56. The receiving waters into which Allan Myers discharged pollutants in violation of a permit are identified in Appendix B. Each of these receiving waters is either a tributary or unnamed tributary that is a perennial tributary, or flows into a perennial tributary, to a traditionally navigable waterway. *See* Appendix B.

57. Unless enjoined, these violations will continue or will recur at other construction sites.

58. Pursuant to 33 U.S.C. §1319, Allan Myers is liable for injunctive relief and civil penalties of up to \$32,500 per day for each such violation occurring March 16, 2004 through and including January 12, 2009, and \$37,500 per day for each such violation thereafter.

59. Pursuant to the State Plaintiff's analogous state law, Allan Myers is liable for injunctive relief and civil penalties for each violation that occurred at a Site in Virginia that is listed in Appendix A. Va. Code §§ 62.1-44.15:42 (2014) (originally codified at Va. Code § 10.1-603.12:4 (2012)) 62.1-44.15:48 (2014) (originally codified at Va. Code § 10.1-603.14 (2012)), 62.1-44.23 (2014) and 62.1-44.32 (2014).

PRAYER FOR RELIEF

WHEREFORE, the United States of America, and the Commonwealth of Virginia, respectfully request that this Court:

A. Order Allan Myers to comply with the terms of the Act and the conditions of the Applicable Permits at its construction sites by requiring, among other things, the development and implementation of appropriate storm water pollution prevention plans, the application of BMPs to minimize or eliminate discharges of pollutants from its sites, and the implementation of

corporate policies designed to achieve and assure compliance with the Applicable Permits and the Act;

B. Assess civil penalties against Allan Myers of up to \$32,500 per day for each such violation occurring March 16, 2004 through and including January 12, 2009, and \$37,500 per day for each such violation thereafter;

C. Assess an appropriate civil penalty pursuant to Va. Code §§ 62.1-44.32 and implementing regulations against Allan Myers for each day of violation;

D. Award the United States and the Commonwealth of Virginia their costs and disbursements in this action; and


E. Grant any such further relief as this Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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Date: 13 APRIL 2015



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Appendix A

APPENDIX A
LIST OF ALLAN MYERS SITES WITH VIOLATIONS

Site Name	State	Date of Violation	Type of violation		
			No Permit	Discharge w/o Permit	Violation of CWA/ Applicable Permit
Applewood Estates of Worcester	PA	Apr. 29, 2005 to Jan. 19, 2006	No Permit		BMP O&M; Sequencing
Fieldbrook	PA	Dec. 2, 2004 to March 25, 2005	No Permit		BMP O&M
The Villages at Trewellyn	PA	July 8, 2005 to June 7, 2006	No Permit	Discharge w/o Permit	BMP O&M; Unapproved E & S Plan; Sequencing
Hilltown Ridge and Reserve	PA	July 19, 2004 to Apr.20, 2006			Co-Permittee: BMP O&M; Sediment Discharges; Sequencing
Orchard Brook	PA	Dec. 22, 2004 to June 29, 2006			Co-Permittee: BMP O&M; Sediment Discharges; Sequencing
The Reserve at Waynebrook	PA	Oct. 27, 2004 to Nov. 16, 2005			Co-Permittee : BMP O&M; Sequencing
Summit at College Park	MD	Dec. 16, 2005 to June 8, 2006			3rd Party Permit: BMP O&M; Sediment Discharges; Sequencing
Ammendale Road	MD	May 2, 2005 to June 8, 2006	No Permit	Discharge w/o Permit	BMP O&M; Sequencing
Vista Gardens	MD	March 25, 2005 to June 1, 2006			3rd Party Permit: BMP O&M; Sediment Discharges
Elysian Heights	VA	Oct. 21, 2004 to May 17, 2006			3rd Party Permit: BMP O&M
Selma Estates	VA	Nov. 8, 2005 to May 19, 2006			3rd Party Permit: BMP O&M
Lovettsville Town Center	VA	Nov. 2, 2005 to May 25, 2006			3rd Party Permit: BMP O&M; Sediment Discharges
Harbor Station	VA	Jan. 13, 2006 to July 17, 2006			3rd Party Permit: BMP O&M; Sediment Discharges
Port Potomac	VA	May 18, 2006 to July 28, 2006			3rd Party Permit: BMP O&M

Appendix B

APPENDIX B
LIST OF RECEIVING WATERS FROM ALLAN MYERS SITES

Site Name	State	Latitude	Longitude	Immediate Receiving Waterway(s)	Flowpath to Traditionally Navigable Waterway			
Applewood Estates of Worcester	PA	40.191267	-75.333025	Unnamed Tributary of Zacharias Creek	Zacharais Creek	Skippack Creek	Perkiomen Creek	Schuylkill River (Delaware River)
FieldBrook	PA	40.052169	-75.568519	Valley Creek	Schuylkill River	Delaware River		
The Villages at Trewellyn	PA	40.202358	-75.225632	Trewellyn Creek	Wissahickon Creek	Schuylkill River	Delaware River	
Hilltown Ridge & Reserve	PA	40.305836	-75.264755	Unnamed Tributaries of West Branch Neshaminy Creek	West Branch Neshaminy Creek	Neshaminy Creek	Delaware River	
Orchard Brook	PA	40.299886	-75.877277	Trout Run	Schuylkill River	Delaware River		
The Reserve at Waynebrook	PA	40.081232	-75.692367	Pickering Creek	Schuylkill River	Delaware River		
Summit at College Park	MD	39.023271	-76.925860	Little Paint Branch Creek	Paint Branch Creek	Anacostia River	Potomac River	Chesapeake Bay
Ammendale Road (Multiple Waterways)	MD	39.054109	-76.916938	Unnamed Tributary of Indian Creek	Indian Creek	Paint Branch Creek	Anacostia River	Potomac River (Chesapeake Bay)
Ammendale Road (Continued)	MD			Little Paint Branch Creek	Paint Branch Creek	Anacostia River	Potomac River	Chesapeake Bay
Vista Gardens	MD	38.957954	-76.826700	Folly Branch	Lottsford Branch	Western Branch Patuxent River	Patuxent River	Chesapeake Bay
Elysian Heights	VA	39.241200	-77.505800	Unnamed Tributary of Potomac River	Potomac River	Chesapeake Bay		
Selma Estates	VA	39.180600	-77.554890	Limestone Branch	Potomac River	Chesapeake Bay		
Lovettsville Town Center	VA	39.277799	-77.641962	Unnamed Tributary of Dutchman Creek	Dutchman Creek	Potomac River	Chesapeake Bay	
Harbor Station (Multiple Waterways)	VA	38.578995	-77.305166	Unnamed Tributary of Powells Creek	Powells Creek	Potomac River	Chesapeake Bay	
Harbor Station (Continued)				Unnamed Tributary of Quantico Creek	Quantico Creek	Potomac River	Chesapeake Bay	
Port Potomac	VA	38.601120	-77.293630	Powells Creek	Potomac River	Chesapeake Bay		